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6 IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 TONY JEROME STRODER, No. C 07-4593 WHA (PR)  
11 Plaintiff, **DISMISSAL WITH LEAVE TO**  
12 v. **AMEND**  
13 M. D. LIZE; R. N. MAGGIE, Head  
14 Nurse; and ALAMEDA COUNTY  
SHERIFF'S DEPARTMENT,  
15 Defendants.  
16 \_\_\_\_\_ /

17 Plaintiff, an inmate of the Alameda County Jail, has filed a pro se civil rights complaint  
18 under 42 U.S.C. § 1983. Plaintiff also requests leave to proceed in forma pauperis.

19 **DISCUSSION**

20 **A. STANDARD OF REVIEW**

21 Federal courts must engage in a preliminary screening of cases in which prisoners seek  
22 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.  
23 § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims  
24 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek  
25 monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro  
26 se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699  
27 (9th Cir. 1990).

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1           To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:  
2       (1) that a right secured by the Constitution or laws of the United States was violated, and (2)  
3       that the violation was committed by a person acting under the color of state law. *West v. Atkins*,  
4       487 U.S. 42, 48 (1988).

5       **B.     LEGAL CLAIMS**

6           Plaintiff contends that defendant Maggie, a nurse, ordered him to give her his crutches  
7       or she would “send [him] to the hole.” She also told him that some of his medical records had  
8       been lost. He contends that she treated him this way was because he had filed a grievance  
9       against her.

10          The only allegations mentioning defendant Lize, a doctor, are that he was named in the  
11       initial grievance that allegedly triggered the retaliation and that he told plaintiff that he does not  
12       know where the missing medical files “went.” This is not sufficient to state a claim against  
13       Lize. From these facts, it is not even possible to tell what sort of claim plaintiff might have in  
14       mind, so the Court is unable to provide any further explanation of the deficiencies of the claim –  
15       if plaintiff chooses to amend, he should simply state the facts which he contends show that Lize  
16       violated his constitutional rights. If the facts are no more than what is presently pleaded,  
17       plaintiff does not have a claim against Lize.

18          Plaintiff has also named the Alameda Sheriff’s Department as a defendant. The police  
19       department of a city and the sheriffs department of a county are public entities under California  
20       law and therefore may be sued in federal court. *See Shaw v. Cal. Dep’t of Alcoholic Beverage*  
21       *Control*, 788 F.2d 600, 604-05 & n.1 (9th Cir. 1986); *see also Brewster v. Shasta County*, 275  
22       F.3d 803, 812 (9th Cir. 2001) (California county sheriff’s department acts for county rather than  
23       state when investigating crime, thus county may be subject to § 1983 liability). As with claims  
24       against municipalities, however, plaintiff must allege that the violation of his rights was  
25       pursuant to a custom or policy of the department, or allege facts from which such a custom or  
26       policy can be inferred. *See Shaw*, 788 F.2d at 610-11. In this complaint plaintiff has not  
27       alleged that the violation of his rights was pursuant to a custom or policy of the Alameda  
28       County Sheriff’s Department, nor has he alleged facts from which such a custom or policy

1 could be inferred.

2 For the reasons set out above, the complaint will be dismissed with leave to amend.  
3 In amending, plaintiff should bear in mind that [w]hile a complaint ... does not need detailed  
4 factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to  
5 relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a  
6 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief  
7 above the speculative level." *See Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65  
8 (2007). Plaintiff must "proffer enough facts to state a claim for relief that is plausible on its  
9 face." *Id.* at 1986-87.

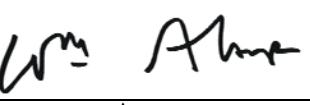
## 10 CONCLUSION

11 1. The complaint is **DISMISSED** with leave to amend, as indicated above, within thirty  
12 days from the date of this order. The amended complaint must include the caption and civil  
13 case number used in this order and the words AMENDED COMPLAINT on the first page.  
14 Because an amended complaint completely replaces the original complaint, plaintiff must  
15 include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262  
16 (9th Cir. 1992). He may not incorporate material from the original complaint by reference.  
17 Failure to amend within the designated time will result in the dismissal of these claims.

18 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court  
19 informed of any change of address by filing with the clerk a separate paper headed "Notice of  
20 Change of Address." Papers intended to be filed in this case should be addressed to the clerk  
21 and not to the undersigned. Petitioner also must comply with the Court's orders in a timely  
22 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute  
23 pursuant to Federal Rule of Civil Procedure 41(b).

## 24 IT IS SO ORDERED.

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26 Dated: February 26, 2008.

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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

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